

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN  
AT JODHPUR

O R D E R

S.B. CRIMINAL APPEAL NO.94/1988  
(Kachru & Ors. Vs. State)

Date of order : July 18, 2006

P R E S E N T

HON'BLE MR. JUSTICE GOPAL KRISHAN VYAS

Mr. Vishal Saraswat on behalf of  
Mr. Sanjay Mathur, for the appellants.  
Mr. L.R. Upadhyay, Public Prosecutor.

This criminal appeal is directed against the judgment dated 28.1.1988 passed by Sessions Judge, Banswara in Sessions Case No.53/1985 whereby after due trial, the learned Sessions Judge acquitted all the accused-appellants for offence under sections 302 and 302/34 I.P.C. and while recording the finding of guilt against all the appellants, convicted them for offence under section 323 I.P.C. and sentenced them to six months simple imprisonment along with the fine of Rs.500/- and in default of payment of fine to further undergo three months simple imprisonment.

To prove the prosecution case, in all 17

prosecution witnesses were produced before the trial court and 21 documents were exhibited and thereafter, statements under Section 313 Cr.P.C. were recorded wherein accused Kalu stated that he has undergone eye operation and he is not in position to see and produced two defendant witnesses.

After considering the entire evidence on record, the learned trial court while relying upon the statement of Dr. Jagdish Chandra - PW-10 gave finding that deceased velji died due to another reasons and not by the injuries inflicted by the appellants but held that deceased was assaulted by the appellants and they caused simple injuries. Hence, the accused-appellants were convicted for offence under Section 323 I.P.C. The trial court arrived at the finding that all the appellants caused simple injuries to deceased velji so also accused-appellant Pushpa caused simple injuries to injured Manjula and Nirmala also.

Learned counsel for the appellants contended that the prosecution has failed to prove its case beyond reasonable doubt and there are major contradiction in the statement of prosecution witnesses, the appellants were wrongly convicted by the learned trial court for offence under Section 323 I.P.C. Learned counsel for the appellants also emphasized that at the time the occurrence took place, accused-appellant No.1 - Kachru was 35 years of age;

accused-appellant No.2 – Kalu was 65 years of age and; accused-appellant No.3 – Pushpa w/o Kachru was 32 years of age. They were convicted in the year 1998 though the prayer for granting the benefits of Probation of Offenders Act to the appellants was made before the trial court but the learned trial court refused to accept the said prayer and sentenced them as above and accused-appellant No.3 Pushpa was also separately convicted for inflicting simple injuries to Manjula and Nirmala. Learned counsel for the appellants prayed that the accused-appellant may be granted benefits of Probation of Offenders Act and in alternative it is prayed that the sentence awarded to the appellants may be reduced to already undergone by them. No other arguments are advanced by the learned counsel for the appellants.

Learned Public Prosecutor opposed the prayer so made by the learned counsel for the appellants and contended that the learned trial court has rightly recorded the finding of guilt against the accused-appellants for commission of offence under Section 323 I.P.C. Hence, no ground for interference with the finding giving by learned trial court is made out.

I have heard learned counsel for the appellants as well as learned Public Prosecutor and perused the judgment impugned and scrutinized the evidence on record.

In my opinion, the trial court has rightly recorded the finding of guilt against the appellants for offence under Section 323 I.P.C. and convicted and sentenced them as aforesaid. In the present case, the occurrence took place in the year 1985 and the appeal is pending before this Court since 1988. Thus, near-about 21 years have elapsed. At the time occurrence took place, the accused-appellant No.1 - Kachru was 35 years of age; accused-appellant No.2 - Kalu was 65 years of age and; accused-appellant No.3 - Pushpa w/o Kachru was 32 years of age and as per the record of the case, appellant No.1 Kachru remained in custody during investigation for a period of one month and twenty days w.e.f. 14.7.1985 to 3.8.1985, appellant No.2 Kalu remained in custody during investigation for a period of fifteen days w.e.f. 14.7.1985 to 25.7.1985 and appellant No.3 Pushpa remained in custody for a period of five days w.e.f. 14.7.1985 to 19.7.1985.

Looking to the facts and circumstances of the case in the interest of justice, in my opinion it is proper while maintaining the conviction awarded to the appellants for offence under Section 323 I.P.C., to direct the accused-appellants to pay Rs.30,000/- as compensation to Kasturi - wife of deceased Velji. Hence, judgment dated 28.1.1988 passed by trial court is modified and it is directed that the sentence awarded to the appellants is reduced to already

undergone by them. However, the amount of fine imposed upon them is enhanced from Rs.500/- to Rs.1,000/- against each of the accused-appellants. The accused-appellants shall also deposit Rs.30,000/- as compensation (Rs.10,000/- to be deposited by each of the accused-appellants). The amount of fine along with compensation shall be deposited by the accused-appellants within a period of two months from today which shall be paid to Kastori wife of deceased Velji as soon as the same is deposited. The accused-appellants are on bail. Their bail bonds are discharged.

with the aforesaid modifications and directions, the appeal stands partly allowed.

(GOPAL KRISHAN VYAS), J.

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